BEFORE THE MONTANA DEPARTMENT
OF LABOR AND INDUSTRY

IN THE MATTER OF HUMAN RIGHTS BUREAU CASE NO. 0089013383:

GLORIA HANSEN,	)	Case No. 1700-2009
	)	
Charging Party,	)	
	)	**HEARING OFFICER DECISION**
vs.	)	**AND NOTICE OF ISSUANCE OF**
	)	**ADMINISTRATIVE DECISION**
LUCKY ME CASINO,	)	
	)	
Respondent.	)	

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I. Procedure and Preliminary Matters

Gloria Hansen filed a complaint with the department on September 19, 2008, alleging that Lucky Me Casino discriminated against her because of marital status by reducing her hours of work and retaliated against her for complaining about that discrimination by discharging her. On April 17, 2009, the department gave notice of a contested case hearing, and appointed Terry Spear as hearing officer.

The contested case hearing was held on October 20, 2009. Hansen attended with her counsel, Santana N. Kortum, Kortum Law Office, PLLC. Lucky Me Casino attended through its designated representative, Joe Connolly, with its counsel, Lee Bruner, Poore, Roth & Robinson, P.C. By agreement of the parties, with good cause shown, Christine Trafford testified by telephone. Kathy Wainwright, Wanda Stewart, Teresa Connolly, Joe Connolly and Gloria Hansen testified in person.

Exhibits 1, 3-4 and 101-107 were admitted into evidence for all purposes by stipulation of the parties.

Portions of Joe Connolly's deposition are also part of the record, being "Exhibit A," a printout of an electronic "pdf" file containing 16 pages from his deposition (pp. 10, 21-22, 59, 61, 65-67, 70-75 and 92-93)[1] and some additional deposition pages (pp. 8, 27 and 34-45) copied and provided at hearing.

Hansen's counsel filed the last post hearing argument on December 10, 2009. A copy of the Hearings Bureau docket accompanies this decision.

II. Issues

[1] The "pdf" file included a cover page and a duplicative second copy of p. 21. The former is included in the exhibit, the latter is not.

The determinative issue is whether the Lucky Me Casino reduced Hansen's hours because she was married and then discharged her in retaliation for complaining about her reduced hours. A full statement of issues is in the final prehearing order.

III. Findings of Fact

1. Teresa Connolly owns the Lucky Me Casino, in Butte, Montana. Her father, Joe Connolly, operates it on her behalf, because she lives in California. Joe consults regularly with Teresa, either long-distance or face to face during her visits to Butte. Joe Connolly also operates another casino in Butte, the Lucky You Casino, which he owns. Because he manages both casinos, he sometimes has employees he supervises and directs who work in both casinos.

2. A long term employee of the Lucky You, JoAnn,[2] began extended medical leave in the fall of 2007. Joe Connolly moved Lori, a long-term employee of the Lucky Me, to cover shifts at the Lucky You during JoAnn's medical leave.[3] This left the Lucky Me short handed.

3. Joe Connolly, with Teresa Connolly's authorization, hired Charging Party Gloria Hansen as a floor attendant at the Lucky Me, beginning December 28, 2007. Hansen, at all times pertinent to this case, was married.

4. There were 14 work shifts available each week at the Lucky Me – one day shift and one night shift each day. Only one employee worked each shift.

5. Hansen was generally told that she was covering shifts for an employee on leave, who might be coming back at some point. Kathy Wainwright, who trained Hansen, testified that Hansen was aware that her position might be temporary, depending upon if and when "Liz" (see footnote 3) came back. The evidence does not establish that either Joe Connolly or Teresa Connolly had made a definitive plan to let Hansen go when long-term personnel were again available. It likewise does not establish that Hansen was told her position was definitely temporary.

6. Hansen worked part time hours at the Lucky Me. Although there may have been some conflicts with other employees, her work performance was basically satisfactory. She worked about four days a week (averaging 7.765 days every two-week pay period) and averaged about 27 hours a week. (Exhibit 105).

7. Wanda Stewart was responsible for scheduling at the Lucky Me at all times pertinent to this matter. She would schedule in advance, and post the monthly

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[2] First names only are used in this decision for employees of the two casinos who did not testify.

[3] There was testimony that another long-term employee ("Liz") was also on leave at the same time, although this was not developed in any detail.

schedule. Employees could identify particular days or shifts that they did not want to work by leaving notes for Stewart. She would try to meet the employee's requests, but did not always succeed. An employee could also arrange with other workers to cover an assigned shift that the employee did not want to work, with notice to Wanda.

8. Hansen's hours fluctuated throughout her employment at Lucky Me. The fluctuations resulted from availability, of Hansen and of other employees, which sometimes resulted in fewer or greater numbers of shifts for Hansen to work.

9. According to the testimony of the witnesses for the casino, when JoAnn came back from sick leave, she resumed her shifts at the Lucky You. Joe Connolly then moved Lori back to her shifts at the Lucky Me, and the Lucky Me was over staffed. The Lucky Me calendars reflecting shift assignments show Lori beginning to work some shifts in July and August 2008. (Exhibit 3). This would have reduced the shifts available for other employees.

10. During her employment Hansen did request assignment to specific shifts as well as requesting specific days offs (at least once asking for assignment to other shifts to "make up" for the shifts she wanted off). She also made a written general request for more work, writing that she was having too much time at home, and pleading, "Save me please, Put me to work." (Exhibit 4, undated note). In sum, Hansen tried both to increase and to decrease her hours worked at various times, depending upon her situation.

11. Hansen worked at least six days during every two-week pay period, for the entire 34 weeks of her employment. For her first four pay periods, from January 9 through March 4, she worked an average of 6.5 work days per pay period. For her next four pay periods, from March 5 through April 29, she averaged seven work days per pay period. Her next three pay periods, from April 30 through June 10, were her busiest. For those three pay periods she worked 10 to 11 days per pay period, averaging 10.667 work days per pay period. For her last six pay periods, from June 11 through August 29, she averaged 7.667 work days per pay period. For 14 of her 17 two-week pay periods (excluding the busiest three pay periods), Hanson averaged 7.144 work days per pay period. The most and fewest days worked in any of those 14 two-week pay periods were nine days and six days, respectively.

12. During her employment, Hansen wrote four checks for cash to the casino, for which she did not have the funds in her bank account. The first check was written on May 28, 2008, the second on June 6, 2008, the third on June 22, 2008, and the fourth on July 31, 2008. Notices to the casino of the returned checks occurred in early June, on June 17, on June 27, and on August 15. (Exhibits 101-04).

13. Hansen testified that she believed the employer allowed employees to take "draws," or advances, by writing a check to the casino, with approval of management, asking to have it "held" for later deposit. The checks were not held – they were deposited, and NSF charges incurred when they were returned. It is not credible that mistakes, bad timing and misunderstandings resulted in four bad checks being deposited even though Hansen asked a co-employee each time to hold the check. The credible evidence of record makes it more likely than not that Hansen did not follow the procedure that she said she understood the employer allowed.

14. Joe Connolly and Hansen never spoke about the bad checks, before or after they were cashed. When he learned about the initial bad checks, he expected Hansen would talk to him and explain but she did not. He expected that Hansen, if she found herself in a financial bind, would talk to him and ask him, on behalf of the casino, either to accept and hold a check until payday or give her a draw, indicating "that was common place for all the employees that I have." He did not expect her to continue to use the casino to cash checks her account could not cover, without permission and without giving the casino a chance to "hold" the check.

15. When the fourth NSF check came in from the bank, Teresa Connolly discussed the problem with her father. Teresa apparently did not know about Joe's willingness to provide "draws" secured by "held" checks from employees. There was no reason she would have known – for any employee who asked for and received such "draws," there would be no NSF checks from the bank to alert Teresa.

16. Teresa considered the repetitive cashing of bad checks by an employee to be a serious problem. Good judgment in deciding when to decline checks at the casino was a valuable asset in employees. Passing one's own bad checks through the casino suggested a serious lack of good judgment, which could spill over into accepting customers' checks in doubtful circumstances. Teresa believed Hansen's pattern of cashing bad checks at the casino justified firing her.

17. Had Hansen obtained Joe's approval to hold the checks as "draws," Teresa and Joe would never have confronted the bad check question. When the situation arose for the fourth time, and Hansen had neither explained the bad checks to him nor ever asked him for approved draws instead of simply cashing the checks, Joe agreed with his daughter that Hansen's four bad checks in four months called her judgment and perhaps her integrity into sufficient question so that letting her go was appropriate.

18. It was reasonable for Teresa Connolly, the owner, to decide to discharge an employee who had, without explanation, written repeated bad checks to the casino. It was reasonable for Joe Connolly to agree with his daughter, under the circumstances. He had no reason to disagree with Teresa and ask for another chance

for Hansen. The conversation they had and the decision they reached to discharge Hansen occurred on or before August 28, 2008.

19. On August 28, 2008, Hansen had left a note for Joe Connolly, stating that she was not working as many shifts as a newer worker and reporting that she "was told it's because Dee & Lori are single parents and need the hours more." Her note went on to say that she was feeling "a little discriminated against because I'm married." (Exhibit 4, noted dated 8/28/08). Joe Connolly saw the August 28, 2008, note from Hansen, which she left at the end of her shift that day, when he met with Hansen on August 29, 2008, to implement Teresa Connolly's decision (with which he agreed) to discharge her.

20. During her August 29, 2008 meeting with Joe Connolly, Hansen asked why the unmarried employees were given preference over married floor attendant employees. Joe Connolly did not answer, neither admitting that such a preference was being given nor denying it. He instead told Hansen the casino was letting her go. Hansen asked the reason for her termination, and Joe Connolly did not tell her the reason. He prepared her last check and gave it to her. She did not make a subsequent written request for the reason for her discharge prior to this proceeding.

21. There is no credible corroborating evidence that the casino reduced Hansen's hours to give more hours to single employees. Both Wainwright and Stewart (to whom Hansen attributed statements to this effect) denied saying or ever hearing that Hansen's hours were to be or were reduced to give more hours to single mothers working at the Lucky Me. The evidence does not establish that the Lucky Me employed more single than married employees. The evidence does not establish that Teresa Connolly or Joe Connolly directed Wanda Stewart to reduce Hansen's hours in favor of single employees or that Stewart was ever directed, for any reason or even without any reason, to reduce Hansen's hours.

22. Based upon the credible evidence of record, the reduced shifts that Hansen worked after her busiest three pay periods resulted from having more employees available to work the set number of shifts at the Lucky Me, as well as from the fluctuation in the days and shifts that all of the available employees wanted to work and did not want to work.

IV. Opinion[4]

Montana law prohibits employment discrimination because of marital status. Mont. Code Ann. §49-2-303(1)(a). It is also illegal to retaliate against a person who opposes illegal discrimination. Mont. Code Ann. §49-2-301. Since Hansen did not

[4] Statements of fact in this opinion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

provide credible direct evidence of illegal discrimination or retaliation, *McDonnell Douglas Corp. v. Green*, 41 U.S. 792 (1973), provides the applicable standards of proof for both of her claims. ***E.g.***, *Heiat v. Eastern Montana College* (1996), 275 Mont. 322, 912 P.2d 787, 797-98. The adverse actions of which Hansen complained were (1) reduction of her work hours and (2) termination of her employment. Each adverse action will be discussed separately.

A. Reduction of Hansen's Hours

Taking adverse employment action against an employee because of that employee's marital status is illegal discrimination. ***E.g.***, *Mercer v. McGee* (2008), ¶19, 2008 MT 374, 346 Mont. 484, 197 P.3d 961. To prove employment discrimination based on marital status, Hansen had to show that: (1) she belonged to a protected class; (2) she was otherwise qualified for continued employment; and (3) her working hours were reduced under circumstances that raise a reasonable inference that she was treated differently because of her protected class status. *Mercer*, ***citing and applying*** *Vortex Fishing Systems, Inc. v. Foss*, ¶14, 2001 MT 312, 308 Mont. 8, 38 P.3d 836; *Laudert v. Richland County Sheriff's Office*, ¶¶20-22, 218 MT 2000, 301 Mont. 114, 7 P.3d 386; Admin. R. Mont. 24.9.610(2)(a).

Hansen established her protected class membership (married). She established that her work performance was satisfactory, so that she was otherwise qualified for continued employment. Considering only her evidence, she established a basis upon which a fact finder could infer that her hours were being reduced to provide more work hours for single mothers employed by the casino, based upon the evidence that her hours did shrink from their peak numbers form the end of April through early June, and her testimony of what she heard from people she perceived as decision-makers – the employee who trained her (Wainwright) and the employee who did the scheduling (Stewart). Thus, Hansen established a prima facie case of marital discrimination in employment under *McDonnell Douglas* regarding reduced hours.

Hansen's prima facie case under *McDonnell Douglas* raised an inference of discrimination, shifting the burden to the casino to "articulate some legitimate, nondiscriminatory reason" for adverse action. *McDonnell Douglas*, 411 U.S. at 802. The casino had the burden to present evidence showing that it had a legitimate nondiscriminatory reason for its adverse action. *Crockett v. City of Billings* (1988), 234 Mont. 87; 761 P.2d 813, 817.

The casino must satisfy this second tier of proof under *McDonnell Douglas* for two reasons:

> [It] meet[s] the plaintiff's prima facie case by presenting a legitimate reason for the action and . . . frame[s] the factual issue

> with sufficient clarity so that the plaintiff will have a full and fair opportunity to demonstrate pretext.

Texas Dept. of Comm. Affairs v. Burdine (1981), 450 U.S. 248, 255-56.

The casino satisfied this second tier of proof by presenting evidence that clearly and specifically articulated a legitimate reason for assigning Hansen fewer hours of work, ***e.g.***, *Johnson v. Bozeman School District* (1987), 226 Mont. 134, 734 P.2d 209, 212 – it now had more employees to schedule, with Lori again working at Lucky Me, and did not schedule Hansen for as many shifts as she had worked in her busiest three pay periods. It successfully refuted her prima facie case with evidence that the decrease in her shifts after her busiest pay periods resulted from more employees being available to work, and with evidence that the scheduler was not instructed to give and did not assign more hours to single workers by reason of their marital status.

Once the company produced its legitimate reasons for its adverse employment action, Hansen had the burden to prove that the defendant's reasons were in fact a pretext. *McDonnell Douglas* ***at*** 802; *Martinez v. Yellowstone County Welfare Dept.* (1981), 192 Mont. 42, 626 P.2d 242, 246. To meet this third tier burden, Hansen could present either direct or indirect proof of the pretextual nature of the company's proffered reasons:

> She may succeed in this either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence.

Burdine ***at*** 256. Ultimately, Hansen always had the burden to persuade the fact-finder that the casino did illegally discriminate against her. *M.R.L. v. Byard* (1993), 260 Mont. 331, 860 P.2d 121, 129; *Crockett*, ***op. cit.***, 761 P.2d ***at*** 818; *Johnson*, ***op. cit.***, 734 P.2d ***at*** 213.

Both Wainwright and Stewart denied ever saying that Hansen's hours were reduced because of her marital status. They both also denied (as did both Joe and Teresa Connolly) that there was any direction by management to reduce Hansen's hours because of her marital status. The Hearing Officer was not persuaded by the substantial and credible evidence of record that Hansen's marital status played any role in the reduction of her hours. The reduction of Hansen's hours was consistent with having more employees on the schedule. The denials of Wainwright and Stewart were credible. Hansen's testimony that such statements were made was not as credible.

B. Discharge in Retaliation for Opposition to Illegal Discrimination

To establish her prima facie case of retaliation, Hansen had to prove that (1) she engaged in protected activity; (2) the casino took a significant adverse action against her; and (3) there was a causal connection between the significant adverse action and her protected activity. *Rolison v. Bozeman Deac. Health Serv., Inc.*, ¶17, 2005 MT 95, 326 Mont. 491, 111 P.3d 2002; Admin. R. Mont. 24.9.610. This is the *McDonnell Douglas* test again, shaped to fit a claim of illegal retaliation in violation of Mont. Code Ann. § 49-2-301.

Hansen presented evidence that the day before her termination, she had submitted a written complaint or grievance (although there is no evidence that Lucky Me had any policies or procedures for handling any grievances) that her hours were being cut to favor single employees. That complaint or grievance, on its face, was opposition to illegal discrimination, which is protected activity. The casino did fire her, a significant adverse action. It took that action the very next day after she submitted her complaint or grievance, giving rise to an inference that her protected activity triggered her discharge. Considering only the evidence favorable to her, Hansen established her prima facie case.

The second tier of *McDonnell Douglas* is the same for a retaliation claim as it is for a marital discrimination claim. For the reasons stated in the previous section, based upon the authorities therein cited, the casino had to articulate some legitimate, nondiscriminatory reason for ending Hansen's employment, presenting evidence supporting that reason.

Writing four NSF checks to her employer was a legitimate nondiscriminatory business reason for the casino's decision to end her employment, particularly since the casino was at that time overstaffed. The casino met its second tier burden. It proved legitimate business reasons for its adverse action.

The casino also refuted two key elements of Hansen's prima facie case.

First, it presented substantial and credible evidence that the decision to discharge Hansen was made by Teresa Connolly without any knowledge of Hansen's opposition to alleged marital discrimination. It presented substantial and credible evidence that Joe Connolly concurred in that decision, which he then subsequently implemented after glancing at the note Hansen had written (complaining she felt discriminated against) the previous day. Without knowledge of the note, neither of the Connollys could have been motivated by retaliatory animus when they decided, by August 28, 2009, to end Hansen's employment. Thus, Hansen's proof of the third element of her prima facie case, that there was a causal connection between her discharge and any opposition to illegal discrimination, was refuted.

Second, the casino also presented substantial and credible evidence (as discussed in the previous section) that no one ever told Hansen that single employees were getting some of what otherwise would have been "her" shifts because she was married. To establish her retaliation case, Hansen had to prove that she opposed a practice prohibited by the Human Rights Act. *Evans v. Kansas City Missouri S. D.* (8th Cir. 1995), 65 F.3d 98, 101; ***see also*** *Jurado v. Eleven-Fifty Corp.* (9th Cir. 1987), 813 F.2d 1406, 1411-12.[5] She need not prove that she opposed a practice that actually was marital discrimination to establish this element of her retaliation claim. "All that is required is that she 'reasonably believed in good faith that the practice she opposed violated [the Act].'" *Fine v. Ryan Intern'tl Airlines* (7th Cir. 2002), 305 F.3d 746, 752; ***citing*** *McDonnell v. Cisneros* (7th Cir. 1996), 84 F.3d 256, 259; *Alexander v. Gerhardt Enterprises, Inc.* (7th Cir. 1994), 40 F.3d 187, 195-96 ***and*** *Dey v. Colt Constr. & Dev. Co.* (7th Cir. 1994), 28 F.3d 1446, 1457-58 (***quoting*** *Alexander* ***at*** 195).

To establish that she opposed a prohibited practice, Hansen had to prove both that she (1) had a subjective good faith belief that she was opposing an illegal discriminatory practice and (2) that this subjective good faith belief was also objectively reasonable. *Lipphardt v. Durango Steakhouse*, 267 F.3d 1183, 1187 (11th Cir. 2001); *Hamner v. St. Vin. Hosp. and Health Care Ctr.* (7th Cir. 2000), 224 F.3d 701, 707; *Sullivan v. Nat'l R.R. Passenger Corp.* (11th Cir.), 170 F.3d 1056, 1058, ***cert. den.***, 528 U.S. 966 (1999).

By rebutting Hansen's testimony that she was told she was losing shifts because she was married, the casino refuted the first element of her prima facie case, by calling into question whether she reasonably believed that she was opposing an illegal discriminatory practice when she wrote her note.

The third tier of *McDonnell Douglas* is likewise the same for a retaliation claim as it is for a marital discrimination claim. For the reasons stated in the previous section, based upon the authorities therein cited, Hansen had the burden to persuade the fact finder that retaliation rather than a legitimate business reason more likely motivated the employer or to show that the employer's proffered explanation was unworthy of credence. The Montana Supreme Court has characterized this third tier burden as requiring proof, by a preponderance of the evidence, "that the reasons for adverse action offered by the defendant were not true, but, rather, a pretext for discrimination." *Ray v. Mont. Tech.*, 2007 MT 21, ¶31, 335 Mont. 367, 152 P.3d 122 (and cases therein cited).

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[5] Montana follows federal law if the same rationale applies. ***See*** *Crockett* ***and*** *Johnson*, ***op. cit.***

Substantial and credible evident that a fact is more likely than not true can establish the truth of any fact at issue. Mont. Code Ann. §26-1-403(1). When the record contains conflicting evidence of what is true, the fact finder decides the credibility and weight of the evidence. *Stewart v. Fisher* (1989), 235 Mont. 432, 767 P.2d 1321, 1323; *Wheeler v. City of Bozeman* (1989), 232 Mont. 433, 757 P2d 345, 347; *Anderson v. Jacqueth* (1983), 205 Mont. 493, 668 P.2d 1063, 1064. The standard for deciding facts is the same in discrimination cases – it is the preponderance of evidence standard. ***Cf.***, *Pannoni v. Bd. of Trustees*, ¶73, 2004 MT 130, 321 Mont. 311, 90 P.3d 438, (Cotter, dissenting) (defining the preponderance standard as "more likely than not"). Considering the entirety of the evidence of record, the Hearing Officer determined that more likely than not the reasons offered by the casino for discharging Hansen were true, rather than a pretext for retaliating against her.

Hansen did not complain that her discharge was a further instance of marital discrimination. If she had, the analysis would be essentially the same, as would the result.

Finally, Hansen argued that Lucky Me did not directly present an argument against the retaliation claim in its post hearing brief, and therefore she should necessarily prevail. Lucky Me presented evidence of an entirely different reason for her discharge other than retaliatory animus – the NSF checks she wrote to her employer. The Hearing Officer will not use a technicality to decide this case contrary to the substantial and credible evidence of record.

C. Credibility

Sometimes a disputed fact question can be resolved because one side's case depends upon the testimony of a witness shown to be, to put it gently, untruthful. This is not such a case. The Hearing Officer did not find that the credible evidence of record established that Hansen was prevaricating.

It is possible, based on Hansen's evidence, that she did think this particular employer was fine with employees repeatedly writing bad checks for cash, with no consequences other than having the amount of the checks taken out of their next paychecks. It is possible, based on Hansen's evidence, that she heard co-employees say something from which she decided that she was losing shifts because she was married. It is possible that all of the witnesses who testified to the contrary on these points were mistaken, had bad memories or (in some instances) shaped their testimony to favor their employer. However, it was Hansen who had the ultimate burden to prove that it was more likely than not, as already noted, that her hours were reduced because of her marital status and/or that she was discharged in retaliation for her note complaining that she felt discriminated against because of her

marital status. The burden-shifting process of *McDonnell Douglas* was aptly described in *M.R.L. v. Byard*, ***op. cit. at*** 129:

> The burden of persuasion remains with the complainant throughout the analysis. The employer need only set forth some legitimate reason for rejecting the employee, it does not have to prove this reason was the motivation to reject the complainant. However, if it can set forth a reason, the complainant's prima facie case is considered rebutted. [***citing*** *McDonnell Douglas* ***at*** 802-803].
>
> The third step in the analysis provides for an opportunity for the complainant to prove that the legitimate reasons given for the employer's failure to hire are a pretext for discrimination. "This burden now merges with the ultimate burden of persuading the court that [plaintiff] has been the victim of intentional discrimination." [***Quoting*** *Johnson*, ***op. cit. at*** 213, ***citing*** *Burdine* ***op. cit. at*** 256.]

Because of the effective second tier evidence presented by the casino, Hansen failed to carry her ultimate burden of persuasion that she had been the victim of either marital status discrimination or retaliation. The casino did not prove that she was lying under oath. The casino did not prove that Hansen committed theft by cashing the four bad checks (which would require meeting a much higher standard of proof). The casino did provide a sufficient legitimate business reason for its adverse actions, and did sufficiently refute Hansen's proof of her prima facie case.

The facts found reflect Hansen's ultimate failure to prove that it was more likely than not that she was the victim of either illegal marital status discrimination in employment or retaliation. Therefore, she cannot recover and the department cannot impose affirmative relief.

V. Conclusions of Law

1. The Department has jurisdiction over this case. §49-2-509(7) MCA.

2. The evidence did not establish that Lucky Me Casino illegally retaliated or discriminated in employment because of marital status against Gloria Hansen as she alleged in her complaint. Mont. Code Ann. § 49-2-301 and 303.

VI. Order

1. Judgment issues in favor of Lucky Me Casino and against Gloria Hansen on her charges that the casino discriminated against her in employment because of marital status and retaliated against her for opposing illegal discrimination.

2. The Human Rights Act complaint of Gloria Hansen against Lucky Me Casino is dismissed.

Dated: January 20, 2010

/s/ TERRY SPEAR
Terry Spear, Hearing Officer
Montana Department of Labor and Industry

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NOTICE OF ISSUANCE OF ADMINISTRATIVE DECISION

To: Santana N. Kortum, Kortum Law Office, PLLC, attorney for Gloria Hansen, and Lee Bruner, Poore, Roth & Robinson, P.C., attorney for Lucky Me Casino:

The decision of the Hearing Officer, above, which is an administrative decision appealable to the Human Rights Commission, issued today in this contested case. Unless there is a timely appeal to the Human Rights Commission, the decision of the Hearing Officer becomes final and is not appealable to district court. Mont. Code Ann. § 49-2-505(3)(c).

TO APPEAL, YOU MUST, WITHIN 14 DAYS OF ISSUANCE OF THIS NOTICE, FILE A NOTICE OF APPEAL, WITH 6 COPIES, with:

Human Rights Commission, c/o Katherine Kountz
Human Rights Bureau, Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

You must serve ALSO your notice of appeal, and all subsequent filings, on all other parties of record.

ALL DOCUMENTS FILED WITH THE COMMISSION MUST INCLUDE THE ORIGINAL AND 6 COPIES OF THE ENTIRE SUBMISSION.

The provisions of the Montana Rules of Civil Procedure regarding post decision motions are NOT applicable to this case, because the statutory remedy for a party aggrieved by a decision, timely appeal to the Montana Human Rights Commission pursuant to Mont. Code Ann. § 49-2-505 (4), precludes extending the appeal time for post decision motions seeking relief from the Hearings Bureau, as can be done in district court pursuant to the Rules.

The Commission must hear all appeals within 120 days of receipt of notice of appeal. Mont. Code Ann. § 49-2-505(5).

IF YOU WANT THE COMMISSION TO REVIEW THE HEARING TRANSCRIPT, include that request in your notice of appeal. The appealing party or parties must then arrange for the preparation of the transcript of the hearing at their expense. Contact Shawndelle Kurka, (406) 444-3870 immediately to arrange for transcription of the record.

HANSEN.HOD.TSP